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Christy's Auto Rentals, Inc. v. Massachusetts Homeland Insurance Co., 204 A.3d 1071 (R.I. 2019)

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Civil Procedure. *Christy's Auto Rentals, Inc. v. Massachusetts Homeland Insurance Co.*, 204 A.3d 1071 (R.I. 2019). The affirmative defense of standing is not waived when it is raised in a motion for summary judgment after not having been pled in an answer or reply, and there is no standing when a plaintiff seeks a declaratory judgment against a tortfeasor's insurer before receiving a judgment against the tortfeasor, as there is no injury-in-fact.¹

FACTS AND TRAVEL

This case arises from a dispute concerning liability related to a motor vehicle accident that occurred in October 2012 when Christian Lanoie (Mr. Lanoie) was driving a truck he rented from Christy's Auto Rentals, Inc. (Christy's).² At the time, Mr. Lanoie was employed as a manager by a barbecue food vendor.³ On October 9, 2012, Mr. Lanoie entered a Rental Agreement (Agreement) with Christy's to rent a box truck for one day.⁴ He intended to use the truck to transport his employer's barbecue equipment, used at a seasonal fair in Massachusetts, to the vendor's home location.⁵ When entering the Agreement, Mr. Lanoie declined to purchase the offered "Liability Protection" option, and instead agreed to a provision, as shown by his initialing next to it, that signified that he "agree[d] to be responsible for all damage or loss" he might cause to others while operating the truck.⁶ Mr. Lanoie had personal automobile insurance coverage through a policy with Massachusetts Homeland Insurance Company (Homeland) which was in effect when he executed the Agreement.⁷

1. *Christy's Auto Rentals, Inc. v. Mass. Homeland Ins. Co.*, 204 A.3d 1071, 1072 (R.I. 2019).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 1072–73 (internal quotation marks omitted).

7. *Id.* at 1073.

While using the truck at the fair in Massachusetts, Mr. Lanoie collided with a concession trailer, causing some damage to a corner of the rented truck and \$1300 worth of damage to the concession trailer.⁸ Christy's paid the damages to the concession trailer's owner in December 2012.⁹

In April 2014, Christy's filed two suits.¹⁰ One suit was filed against Mr. Lanoie to recover the amount paid to the concession trailer's owners, as well as to recover for the damage incurred to the rented box truck.¹¹ The other suit was a declaratory judgment action against both Mr. Lanoie¹² and Homeland.¹³ Christy's sought a declaration that the damages Mr. Lanoie caused to both the box truck and the concession trailer were covered under his policy with Homeland.¹⁴ Christy's complaint also asserted that there was an actual dispute between Christy's and Homeland under the insurance policy between Mr. Lanoie and Homeland, and that the Superior Court had jurisdiction to make a declaratory judgment under the Uniform Declaratory Judgments Act (UDJA).¹⁵ Homeland answered by denying both that Mr. Lanoie's policy covered the damages in question, and by denying Christy's aforementioned assertions about both the Superior Court's jurisdiction under the UDJA and the existence of an actual dispute between itself and Christy's.¹⁶

Homeland next filed a motion for summary judgment claiming that Christy's lacked standing because there was no material issue of fact in dispute regarding Homeland's liability to Christy's.¹⁷ Christy's then filed a cross-motion for summary judgment, which

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Mr. Lanoie, however, is a nominal defendant who was joined in the action due to a requirement in the Uniform Declaratory Judgments Act, found in Rhode Island General Laws section 9-30-2, and thus is not discussed as a defendant in this case. *Id.* at 1073 n.2.

13. *Id.* at 1073.

14. *Id.*

15. *Id.* Christy's argued the Superior Court's jurisdiction was derived from Rhode Island General Laws section 9-30-1, which generally allows a court to issue declaratory judgments. *Id.*

16. *Id.*

17. *Id.*

argued that Homeland had waived the ability to bring a standing defense by not asserting that defense in its answer, and that Christy's had standing under the UDJA.¹⁸

Two hearings were conducted before the hearing justice on the issue of standing.¹⁹ At the final hearing, the hearing justice issued a bench decision in which he ruled that the issue of standing was not waived because it was raised in a motion for summary judgment where Christy's had ample opportunity to argue against it, which they in fact did.²⁰ Having decided that, the hearing justice then entertained the substantive question of Christy's standing, and held that Christy's did not have standing because they had not yet secured a judgment against the tortfeasor, Mr. Lanoie, and thus could not have standing against his insurer.²¹ Therefore, due to lack of standing, the hearing justice determined that Christy's claim was barred.²² The hearing justice granted Homeland's motion for summary judgment and denied Christy's cross-motion, and Christy's timely appealed to the Rhode Island Supreme Court (the Court).²³

ANALYSIS AND HOLDING

In adjudicating Christy's appeal, the Court reviewed the summary judgment motions *de novo*, and in doing so, considered two issues: first, whether Homeland's defense of Christy's lack of standing was procedurally waived by being brought for the first time in a summary judgment motion; and second, if it were not waived, whether Christy's had standing to bring a declaratory judgment action against Homeland.²⁴

18. *Id.*

19. *Id.*

20. *Id.* at 1073–74.

21. *Id.* at 1074. The hearing justice noted that this requirement for a judgment against the tortfeasor to create standing for a suit against the tortfeasor's insurer had not yet been clearly decided by the Rhode Island Supreme Court, but he pointed towards "language" indicating that it was accepted as a requirement in both Rhode Island and "most other jurisdictions." *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

The Court began by discussing the first issue—procedural waiver of an affirmative defense of lack of standing.²⁵ Christy's argued that Rule 8(c) and Rule 12(h) of the Superior Court Rules of Civil Procedure, which work together to waive defenses enumerated in Rule 8(c) if they are not asserted in an initial motion, answer, or reply, operate as a bar against a defense of lack of standing that is not brought in an initial motion or an answer or reply.²⁶ However, as the Court pointed out, Rule 8(c) does not include standing in its list of affirmative defenses that, according to Rule 12(h), are waived if not raised in a motion, answer or reply.²⁷

Christy's next argued, however, that a previous Rhode Island case finding the defense of standing waived, *Direct Action for Rights and Equality v. Gannon*, was applicable, and supported a finding that standing should be waived if not properly pled in a motion or an answer.²⁸ However, the Court distinguished *Direct Action* because the issue of standing was never raised before trial, and thus impliedly, the defendant had no chance to respond.²⁹ In contrast, here, the issue of standing was discussed in both parties' memoranda and was debated during the course of two pretrial hearings.³⁰

Additionally, the Court determined that even if standing *was* found in the list of Rule 8(c)'s waivable defenses, the Court would still find that raising the issue at the summary judgment stage was sufficient here given the "totality of what transpired in the Superior Court," specifically, that Christy's had the ability to, and did in fact, argue the substantive issue of standing before the hearing justice.³¹ The Court therefore found that Christy's was not prejudiced by the standing issue being raised when it was, thus the Court found that the defense of lack of standing was not waived.³²

The Court next considered whether Christy's had standing to bring a declaratory judgment claim against Homeland as Mr.

25. *Id.* at 1074–75.

26. *Id.* at 1075.

27. *Id.*

28. *Id.* (citing *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998)).

29. *Id.*

30. *Id.* at 1073.

31. *Id.* at 1075–76.

32. *Id.* at 1076.

Lanoie's insurer.³³ Christy's argued that it had standing under the UDJA.³⁴ However, the Court pointed to an earlier decision, *Bowen v. Mollis*, which stated that without an "actual justiciable controversy," the Superior Court lacked jurisdiction under the UDJA.³⁵ Although Christy's looked to earlier Rhode Island Supreme Court decisions that had left the issue of whether standing existed in similar factual situations undecided, the Court distinguished those previous cases because the issue of standing had not been briefed.³⁶ Here, by contrast, the substantive issue of standing had been fully briefed and argued, and thus the Court found it necessary to "grapple with that long-deferred issue."³⁷ In so grappling, the Court relied on its jurisprudence requiring an injury-in-fact as the starting point to finding standing.³⁸ The Court found that because Christy's had not yet established liability against Mr. Lanoie nor received a judgment against him, its asserted injury attributable to Homeland, namely Homeland's refusal to indemnify Mr. Lanoie, was entirely hypothetical, and thus not yet a cognizable injury.³⁹

In addition, the Court held that Christy's was not a party to the insurance policy between Mr. Lanoie and Homeland, and thus could not seek its interpretation or enforcement.⁴⁰ The Court did note that Christy's might one day have standing for a remedy.⁴¹ If and when Christy's obtained a judgment against Mr. Lanoie and was unable to collect on that judgment, it would have an actual injury-

33. *Id.*

34. *Id.* The Uniform Declaratory Judgments Act provides in relevant part:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.

Id. (quoting 9 R.I. GEN. LAWS § 9-30-2).

35. *Id.* (citing *Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008)).

36. *Id.* (citing *Mendez v. Bright*, 849 A.2d 329, 332 n.2 (R.I. 2004) and *Robinson v. Mayo*, 849 A.2d 351, 353 n.2 (R.I. 2004)).

37. *Id.* at 1077.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

in-fact that would no longer be hypothetical, enabling it to bring a suit against Homeland.⁴²

Accordingly, the Court both found that the issue of standing was not waived by Homeland's failure to assert the issue in its answer, and found a substantive lack of standing for Christy's declaratory judgment action against Homeland due to no injury-in-fact and no privity of contract with the agreement in question, and therefore affirmed both of the Superior Court's judgments.⁴³

COMMENTARY

The Supreme Court's two justifications for finding no waiver of the defense of standing are not equally compelling—the first makes good sense, the second, less so. The Court's finding that the Superior Court's Rules of Civil Procedure do not mention standing in the list of waivable defenses is simple and airtight—it is apparent that standing is not in the enumerated list found under Rule 8(c), and therefore, was not contemplated by the rules as a waivable defense.⁴⁴

However, the Court's decision to go beyond that argument is puzzling. In the additional reasoning for the conclusion that the defense was not waived, the Court states that because Christy's had an ability to defend against the lack of standing argument raised in the motion for summary judgment, it would have been permissible to find the defense not waived even if it had been found in Rule 8(c).⁴⁵ This seems to contradict the force and logic behind Rules 8(c) and 12(h), which work in tandem to bar defenses when they are not raised in an initial motion, answer, or reply. Although the Court cites to previous cases where they have held similarly,⁴⁶ this line of thinking might lead to a situation where each case that raised a potential waiver of a defense would need to be evaluated individually to determine whether the defense was raised at an appropriate time, even when there was a rule covering the exact

42. *Id.* at 1078.

43. *Id.*

44. *See id.* at 1075.

45. *Id.*

46. *Id.* at 1075–76. *See* McNulty v. Chip, 116 A.3d 173, 180–81 (R.I. 2015); Industrial Nat'l Bank v. Peloso, 121 A.2d 1312, 1314 (R.I. 1979); Air-Lite Prod., Inc. v. Gilbane Bldg. Co., 347 A.2d 623, 629 (1975).

situation. The Court's second justification could easily lead to confusion on the application of Rules 8(c) and 12(h), a proliferation of arguments on whether a plaintiff had an appropriate chance to respond to a defense, and ultimately, wasted judicial resources.

CONCLUSION

The Rhode Island Supreme Court held that there was no procedural waiver of the defense of lack of standing when it had been brought in a summary judgment motion but not in a previous answer or reply when the issue had been fully briefed and argued in front of the hearing justice. Additionally, the Court held that because there was no injury-in-fact, there was a lack of standing when a party brought a declaratory judgment action against a tortfeasor's insurer prior to receiving a judgment against the tortfeasor and not being able to collect it.

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